



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.08.2021

Delivered on : 17.09.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A(MD) No.462 of 2014

WEB COPY

Muthu (Died)

1. Kalimuthu

2. Maheswari

3. Kanagaraj

... Appellants / Petitioners

(Cause title accepted as per order

dated 20.02.2014, made in M.P.

(MD) No.1/2014 in CMA(MD) SR

No.7433/2014)

Vs.

Tamil Nadu State Transport Corporation

(Madurai) Ltd., Vannarpettai,

Through its General Manager,

Tirunelveli.

... Respondent / Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to allow this Appeal and to enhance the award amount in M.C.O.P.No.1585 of 2007, on the file of the Motor Accident Claims Tribunal, (Additional District Court / Fast Track Court No.2), Tirunelveli, dated 23.01.2009.

For Appellants : Mr.T.Selvakumaran

For Respondent : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal is filed to enhance the award amount in M.C.O.P.No.1585 of 2007, on the file of the Motor Accident Claims Tribunal - Additional District Court / Fast Track Court No.2, Tirunelveli, dated 23.01.2009.

2.The appellants are the legal representatives of the claimant and the respondent herein is the respondent in the claim petition.

3.Brief substance of the petition, in M.C.O.P.No.1585 of 2007, is as follows:-

On 27.08.2007, at about 7.00 a.m., when the petitioner tried to board the bus, the driver of the bus moved the vehicle in a rash and negligent manner, the petitioner fell down and sustained injuries. The petitioner was admitted in Tirunelveli Medical College Hospital, then, he was shifted to Palayamkottai Krishna Hospital as



inpatient. The left leg of the petitioner was amputated from the knee. The petitioner was aged about 50 years and he was doing construction work and was earning Rs.4,500/- per month. The petitioner claimed a sum of Rs.10,00,000/- as compensation.

4. Brief substance of the counter filed by the respondent, in M.C.O.P.No.1585 of 2007. is as follows:-

Age, income and profession of the petitioner are all denied. The permanent disability is denied. The mode of accident as narrated in the petition is wrong. Only after the passengers board the bus, after the Conductor blow the whistle, the bus was moved from the bus stop. The petitioner tried to board the crowded bus and he fell down and sustained injuries. The accident was only due to the negligence of the petitioner and the respondent is not liable to pay compensation.

5. On the side of the petitioner, two witnesses were examined and eight documents were marked. On the side of the respondent, two witnesses were examined and no document was marked.

6. After considering both sides, the Tribunal awarded a sum of Rs.2,80,000/- as compensation. Against the same, the appellants, who are the dependents of the claimant, approached this Court by way of an Appeal, for enhancement of compensation.

7. On the side of the appellants, it is stated that the Tribunal can award compensation under both the heads (i) for permanent disability and (ii) for loss of income. The Tribunal ought to have granted Rs.1,00,000/- towards pain and sufferings and Rs.1,00,000/- towards loss of amenities. The claimant suffered fracture of backbone. The leg was amputated at the knee level and the Tribunal failed to consider all these points. The income has to be fixed at least at Rs.6,000/- per month, as per the judgment of the Hon'ble Supreme Court reported in **2007 (1) TNMAC-1 [New India Assurance Company Limited V. Smt.Kalpana and others]**, wherein it is stated as follows:-

" Fixing of income at Rs.6,000/- is proper. In the absence of definite material about income, monthly contribution to family after deduction for personal expenses is fixed at Rs.3,000/-."

8. A judgment of this Court reported in **2020-1-TNMAC-449 (DB) [Manikandan V. P.Palani]** is cited, wherein, it is stated as follows:

"Injured claimant aged about 28 years, a car driver, suffered head injury and loss of eye and fracture in left temporal bone and blood clot in brain. Surgery was conducted and blood clot and part of skull removed. Skull injury causing right side paralysis and loss of vision of left eye. Disability assessed by



Medical Board at 100%. The Tribunal fixing disability and loss of earning capacity at 33%. When skull injury caused paralysis of right side limbs, fixation of disability and loss of earning capacity at 33% held to be erroneous and the loss of earning capacity fixed at 100%."

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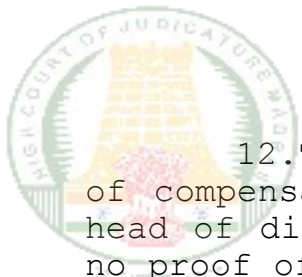
9. On the side of the respondent, it is stated that this is not a fatal case. There was no question of rash and negligent in moving a bus from the bus stop. It was the injured, who tried to board the running bus. On the side of the respondent, it is further stated that P.W.2/ Doctor, who fixed the disability, did not give treatment to the petitioner. It is also stated that the accident took place in the year 2009 and compensation under the heads of loss of estate, pain and sufferings are applicable only for the injured person and not for his legal representatives.

10. A judgment of this Court reported in 2000(IV)-CTC 528 [**The Managing Director, Pandiyan Roadways Corporation, Madurai V. S. Rajalakshmi**] is cited, wherein, it is stated as follows:-

7. The only point which arises for consideration is as to whether the legal representatives of the claimant are entitled to the entire compensation awarded in favour of the claimant. After the filing of the claim petition, since the claimant died during the pendency of the proceedings before the Tribunal itself, the legal representatives of the claimant were impleaded as parties.

8. The contention of learned counsel for the appellant is that the death of the claimant was not due to the accident and as such the legal representatives of the claimant were not entitled to be compensated in respect of the personal injuries suffered by the deceased claimant. Reference is made to a judgment of the learned Judge, **in C.R.P.No.2307 of 1988 [Pushpam V. Nirmala and another]**, dated 03.01.1991. In that case, after analysing the earlier decisions, the learned Judge, had observed that there was a distinction between a case of death over which the legal representatives could maintain a claim for compensation and the case of the personal injuries suffered by the claimant.

11. On the side of the respondent, it is stated that the legal representatives of the claimant are entitled only for the award amount and they are not entitled for claiming enhancement. The appellants are not the sufferers, they are only beneficiaries and that there was no nexus between the accident and the death of the



12.The appellants have approached this Court for enhancement of compensation. The appellants claim compensation, both under the head of disability and under the head of loss of income. There was no proof of income. P.W.2 assessed the permanent disability as 95%. The disability certificate was marked as Ex.P7. X-ray was marked as Ex.P8. The accident took place in the year 2007. The tribunal has awarded Rs.1,90,000/- towards loss of income which is reasonable. As compensation is fixed for permanent disability, there is no necessity to award compensation for loss of earning capacity.

13.The Tribunal has awarded Rs.20,000/- towards pain and sufferings, Rs.55,000/- towards medical expenses and Rs.15,000/- towards extra nourishment. The appellants have claimed a sum of Rs.1,00,000/- as compensation for pain and sufferings. The pain and sufferings was only to the deceased claimant and not to the legal representatives of the claimant and hence, the appellants are not entitled to claim Rs.1,00,000/- towards pain and sufferings. The appellants have claimed Rs.1,00,000/- towards loss of amenities. Loss of amenities is also applicable only for the deceased claimant and not for the present appellants.

14.A sum of Rs.40,000/- is awarded towards temporary loss of income for the period of treatment and for the period of rehabilitation. The award under various other heads is reasonable. Hence, the award, dated 23.01.2009, in M.C.O.P.No.1585 of 2007, on the file of the Motor Accident Claims Tribunal - Additional District Court / Fast Track Court No.2, Tirunelveli is hereby enhanced from Rs.2,80,000/- to Rs.3,00,000/-. This Civil Miscellaneous Appeal is **partly allowed**. The appellants are entitled for a sum of Rs.3,00,000/- as compensation.

15.The respondent / Transport Corporation is directed to deposit **Rs.3,00,000/-** entire award amount along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the appellants are permitted to withdraw equal shares with proportionate interest after deducting any amount received by them earlier. The Claimants are not entitled for interest for the default period, if there is any default. No costs.

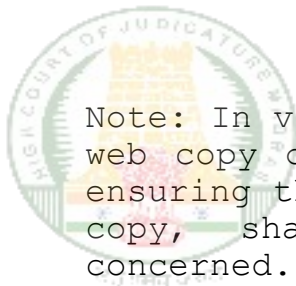
Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

1.The Motor Accidents Claims Tribunal,
(Additional District Court / Fast Track Court No.2),
Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.P.PRABHAKARAN, Advocate (SR-29409[F] dated
17/09/2021)

+1 CC to M/s.T.SELVAKUMARAN, Advocate (SR-29610[F] dated 20/09/2021)

C.M.A(MD)No.462 of 2014
17.09.2021

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